

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LONNIE A. ECKENRODE,	§
	§ No. 345, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. Nos. VN03-01-0621-02
	§ VN04-03-1772-01
Plaintiff Below-	§
Appellee.	§

Submitted: January 4, 2006

Decided: February 22, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 22nd day of February 2006, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, Lonnie A. Eckenrode, was found to have committed a violation of probation ("VOP") in connection with his sentences for Assault in the Second Degree and Unlawful Imprisonment in the First Degree. He was sentenced to a total of 2 years incarceration at Level V, to be suspended after 1 year and 6 months for 6 months Level III

probation.¹ This is Eckenrode's direct appeal of the Superior Court's finding of a VOP.

(2) Eckenrode's counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal; and (b) the Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.²

(3) Eckenrode's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Eckenrode's counsel informed Eckenrode of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Eckenrode also was informed of his right to supplement his attorney's presentation. Eckenrode

¹ By order dated December 22, 2005, the Superior Court modified Eckenrode's sentence on the assault conviction to 161 days at Level V, with no probation, and modified his sentence on the unlawful imprisonment conviction to 1 year at Level V, to be suspended immediately for 1 year at Level III.

² *Person v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

responded with a brief that raises one issue for this Court's consideration. The State has responded to the position taken by Eckenrode's counsel as well as the issue raised by Eckenrode and has moved to affirm the Superior Court's judgment.

(4) Eckenrode raises one issue for this Court's consideration. He claims that he was improperly found to have committed a VOP based upon false, unsubstantiated testimony.

(5) At the VOP hearing, New Castle County police officer Daniel Guzevich testified for the State. He stated that, on April 5, 2005, he investigated an incident at Holloway Terrace, New Castle County, Delaware. In the course of the investigation, Officer Guzevich interviewed Brian Norris, who reported that he and two of his friends, Edwin Carter and Lonnie Eckenrode, got into a fight with three individuals named Joshua Smallwood, Kevin Tindall and Daryl Overby.

(6) Officer Guzevich also interviewed Joshua Smallwood, who reported that, during the fight, Lonnie Eckenrode threw a hammer at him, striking him in the head. Officer Guzevich testified that he observed a lump on Smallwood's head during their interview. Another witness, Kevin Tindall, told Officer Guzevich that, during the fight, Lonnie Eckenrode hit him in the chin with a hammer, causing two puncture wounds. Officer

Guzevich testified that he observed the puncture wounds during his interview with Tindall.

(7) The sole defense witness, Sarah Norris, stated that she was present at the fight, but did not see Eckenrode strike anyone with a hammer. She admitted, however, that she was actively involved in the fight and did not have the opportunity to observe Eckenrode at all times.

(8) It is well-settled in Delaware that hearsay evidence is admissible at VOP hearings because the rules of evidence normally applicable in a criminal trial do not apply.³ At a VOP hearing, there must be some competent evidence to prove the probation violation, but the evidence need not establish guilt beyond a reasonable doubt.⁴ “All that is required is that the evidence and facts be such as to reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation.”⁵ In this case, there clearly was sufficient competent evidence presented at the VOP hearing to support the Superior Court’s finding that Eckenrode had violated the terms of his probation. Accordingly, the Superior Court did not abuse its discretion in so finding.

³ *Brown v. State*, 249 A.2d 269, 271-72 (Del. 1968).

⁴ *Id.*

⁵ *Id.*

(9) This Court has reviewed the record carefully and has concluded that Eckenrode's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Eckenrode's counsel has made a conscientious effort to examine the record and has properly determined that Eckenrode could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Randy J. Holland
Justice